

CAUSE NO. **D-1-GN-18-006840**JULIE BARRERA DURAN,
Plaintiff,

§

IN THE DISTRICT COURT

§

§

v.

§

261ST JUDICIAL DISTRICT

§

RESTY EVINGER,
AMAZON.COM, LLC, AND
CARGO LEASING SOLUTIONS, LLC,

§

§

§

Defendants.

§

TRAVIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION & REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW PLAINTIFF, Julie Barrera Duran, complaining of Defendants, Resty Evinger, Amazon.com, LLC, and Cargo Leasing Solutions, LLC, and in support of same would show the Court:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over this cause as the amount in controversy is within the jurisdictional limits of this Court.

2. Plaintiff seeks monetary relief of more than one million dollars (\$1,000,000.00.)

3. Pursuant to § 15.002(a)(1) and § 15.002(a)(2) of the Texas Civil Practices and Remedies Code, venue is proper in Travis County, Texas.

II. DISCOVERY CONTROL PLAN

4. Pursuant to Texas Rule of Civil Procedure 190.4 discovery is intended to be conducted under a Level Three (III) Discovery Control Plan. Plaintiff affirmatively pleads that this suit is not governed by the expedited actions process in Texas Rule of Civil Procedure 169 because Plaintiff seeks monetary relief over \$100,000.00.

III. PARTIES

5. Plaintiff, Julia Barrera Duran, is an individual who resides in Pflugerville, Travis County, Texas. The last three digits of her driver's license number and social security number are 716 and 821, respectively.

6. Defendant, Resty Evinger, is an individual who resides at 3009 Tallwood Drive, Killeen, Bell County, Texas, 76549, where she may be served with process. **Citation is requested.**

7. Defendant, Amazon.com, LLC, is a foreign corporation organized and existing under the laws of Delaware, whose headquarters are located at 410 Terry Avenue North, Seattle, Washington, 98109, which is authorized to do business in Texas, and which can be served with process by serving its registered agent, Corporation Service Company, dba CSC-Lawyers Incorporating Service Company, at 211 E. 7th Street, Suite 620, Austin, Texas, 78701-3218. **Citation is requested.**

8. Defendant, Cargo Leasing Solutions LLC, is a Texas corporation which can be served with process by serving its registered agent, Roberto A. Ramon, at 1303 Robert E. Lee Road, #3, Austin, Travis County, Texas, 78704. **Citation is requested.**

IV. FACTS

9. On or about March 26, 2018, Plaintiff Julia Duran was a pedestrian, lawfully and properly walking from the Ridgcrest Apartment Homes leasing office to her parked vehicle. Plaintiff Duran's vehicle was properly parked in a marked parking space directly across the front of the leasing office at 3101 Wells Branch Parkway, Austin, Travis County, Texas. Defendant, Resty Evinger, was the driver of a 2018 Ram 1500 commercial van, which she was driving on behalf and for the benefit of Amazon.com, LLC and Cargo Leasing Solutions, LLC. Defendant Evinger's delivery van was backed into a parking space and parked, facing directly towards the

Ridgecrest Apartment Homes leasing office. The clear line of sight from Evinger's delivery van to the leasing office offered Evinger an unobstructed view of persons, like Plaintiff Duran, who lawfully and properly walked down the steps outside the leasing office and into the parking lot to return to their properly parked cars.

10. At all times material to this incident, the front dashboard of Evinger's delivery van was loaded with multiple packages either brown in color emblazoned with the "Amazon smile" logo or white with bright blue lettering emblazoned with the "Prime" logo. The placement of the multiple packages on the front dash and above the steering wheel obstructed Evinger's view directly in front of the delivery van. A photo of the visual obstruction experienced by Defendant Evinger is shown here:



11. As Plaintiff Duran lawfully and properly walked from the Ridgecrest leasing office to her parked car, Defendant Evinger, suddenly and without warning, failed to yield the

right of way to Plaintiff Duran and accelerated the van from a stopped position. As Defendant Evinger's van abruptly moved forward, the front of the delivery van struck Plaintiff with such force that Duran was thrown backwards to the ground, hitting her head on the pavement and thereby causing the injuries and damages made the basis of this suit.

12. Defendant Evinger exited the delivery van using crutches and had a bulky walking boot on her left lower extremity. Evinger placed her crutches on the ground and knelt beside Plaintiff Duran to inquire about her injuries. Evinger told Plaintiff Duran that she never saw her because the packages blocked her view. Defendant Evinger further admitted to the investigating Travis County Sheriff's Officer that there were packages on the front dash obstructing her view and she never saw Plaintiff walking in front of her. The investigating officer took photographs of the packages obstructing Evinger's view. A photo showing Defendant Evinger with her crutches and walking boot, both which impacted Evinger's ability to safely operate a commercial delivery vehicle, is shown here:



13. Julie Barrera Duran has suffered and continues to suffer significant physical pain

and suffering, emotional distress and physical impairment as a result of her injuries made the basis of suit. Defendant Amazon.com, LLC's negligence and gross negligence, Defendant Cargo Leasing Solutions, LLC's negligence and gross negligence, and the negligence and gross negligence of Defendant Resty Evinger, for whom Defendants Amazon.com, LLC and Cargo Leasing Solutions, LLC are vicariously liable, all as pleaded in detail below, were the proximate cause of Duran's injuries in the past and future. Further, on the occasion in question, Defendants, separately and together, were guilty of various acts and/or omissions as alleged below, each of which constituted negligence and/or gross negligence, and each of which was a proximate cause of the ensuing collision and resulting damages sustained by Plaintiff.

V. CAUSES OF ACTION AGAINST DEFENDANT RESTY EVINGER

A. NEGLIGENCE

14. Plaintiff incorporates by reference all other paragraphs of this Petition as if fully set forth herein.

15. Defendant, Resty Evinger, was negligent. Defendant Evinger owed a duty to Plaintiff to use reasonable care while operating a vehicle under Defendant Evinger's direct control.

16. Defendant Evinger had a duty to exercise the degree of care that a reasonably prudent person would use to avoid harm to others in circumstances similar to those described herein. Plaintiff's damages were proximately caused by Defendant Evinger's negligence, carelessness, and reckless disregard of her said duty.

17. Defendant Evinger's negligence, carelessness, and reckless disregard of her duty consisted of the following acts and omissions, based on the information currently known to Plaintiff:

- a. Defendant Evinger failed to maintain a proper lookout;
- b. Defendant Evinger failed to control the speed of her vehicle;
- c. Defendant Evinger failed to properly exercise control of her vehicle;
- d. Defendant Evinger failed to timely apply the brakes to avoid the collision;
- e. Defendant Evinger failed to yield the right of way to a person in the immediate vicinity of the vehicle;
- f. Defendant Evinger failed to check for and recognize a person in the immediate vicinity of the vehicle;
- g. Defendant Evinger failed to exercise due care; and
- h. Other negligent acts.

18. Each of these acts and omissions, singularly or in combination with others, constitutes negligence and proximately caused the occurrence that made the basis of this action, including the injuries sustained by Julie Barrera Duran.

B. GROSS NEGLIGENCE

19. Alternatively, and without waiving the foregoing, Plaintiff would show the Court and jury that the conduct of Defendant Evinger described herein constitutes gross negligence as defined in Texas Civil Practice & Remedies Code § 41.001(11)(A)-(B). Defendant Evinger is liable to Plaintiff for gross negligence-to wit:

- a. Defendant consciously and/or deliberately engaged in recklessness, willfulness, wantonness and/ or malice through Defendant's actions, and/ or inactions she made when, due to her obstructed view, she recklessly failed to recognize an individual in the immediate vicinity of her vehicle, and Defendant Evinger should be held liable in punitive and exemplary damages to Plaintiff; and
- b. Defendant Evinger's actions or inactions directly and proximately caused injury to Plaintiff, which resulted in the damages detailed below.

20. As a result of such gross negligence of Defendant, Plaintiff is entitled to exemplary damages.

VI. CAUSES OF ACTION AGAINST DEFENDANT AMAZON.COM LLC

A. NEGLIGENCE

21. Plaintiff incorporates each and every allegation of the aforementioned paragraphs as if fully set forth herein.

22. Plaintiff would show that Defendant Amazon.com, LLC is liable in one of the following respects, and that Defendant Amazon.com, LLC owed a legal duty to the Plaintiff and Defendant breached that duty due to Defendant's actions and/or inactions.

23. Plaintiff further alleges that Defendant, Amazon.com, LLC negligently hired, retained, trained, and supervised Defendant Cargo Leasing Solutions, LLC in its capacity as a package delivery provider for Amazon.com, LLC. Defendant Cargo Leasing Solutions, LLC was incorporated in Texas on 2/14/2017 and possessed little to no experience in the package delivery business. Nonparty Roberto A. Ramon has publicly identified himself as the CEO of Cargo Leasing Solutions, LLC, a title held by the highest-ranking executive in a company and which confers substantial control over said company. Amazon.com, LLC knew or should have known that Roberto A. Ramon was an incompetent driver with a significant history of violating Texas traffic laws, including but not limited to, being cited for: 1) Speeding on 3/27/2014, 2) Speeding on 8/2/2016, and 3) Electronic Device Use (distracted driving) on 4/5/2018. Given the driving record of Cargo Leasing Solutions, LLC's CEO, Amazon.com, LLC possessed actual or constructive notice that nonparty Ramon was incapable, unwilling, or indifferent to enforcing safe driving practices among Cargo Leasing Solutions, LLC's drivers.

24. Alternatively, at the time of the incident made the basis of suit, Defendant Amazon.com, LLC was responsible for the conduct of Cargo Leasing Solutions, LLC under the doctrine of agency- whether through the one or more of the following: express agency, implied agency or apparent agency.

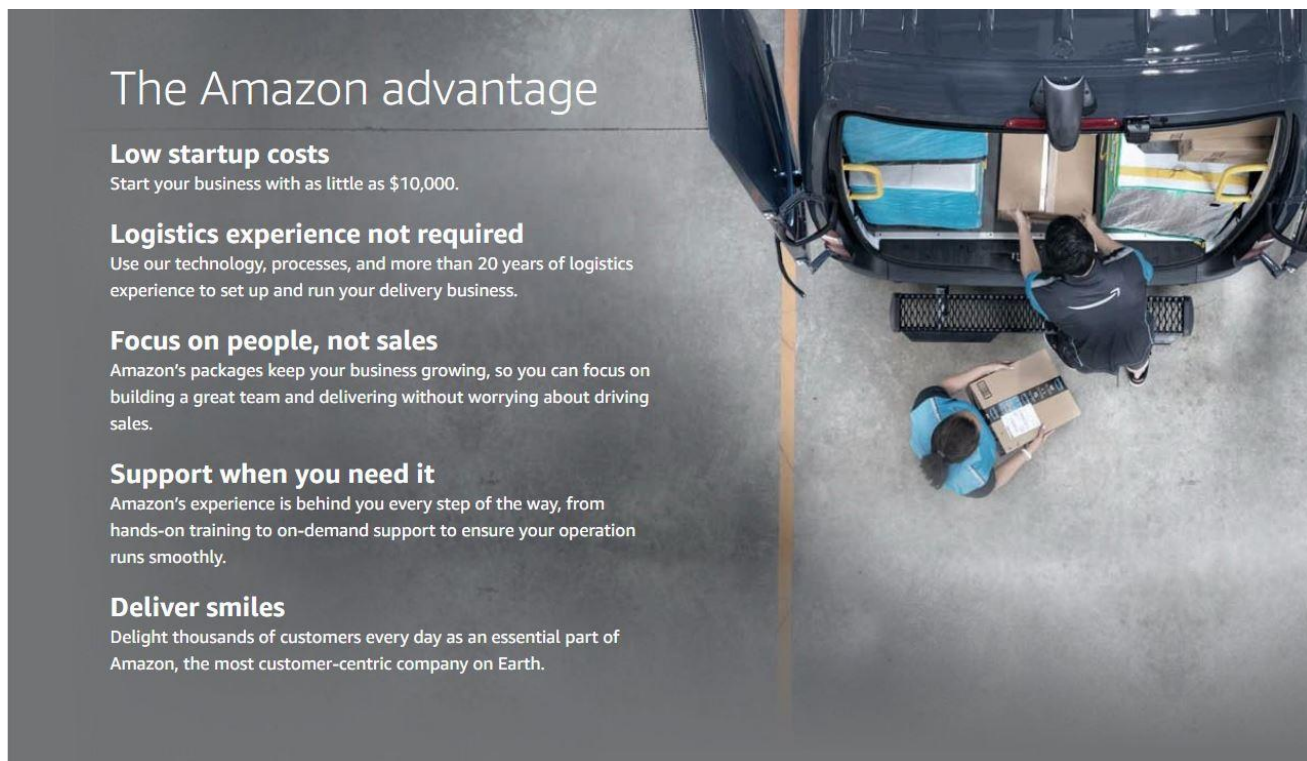
25. Defendant, Resty Evinger operated her delivery vehicle with the express and/or implied consent of Amazon.com, LLC for purposes of delivering packages on Amazon.com,

LLC's behalf. As such, Defendants were engaged in a joint enterprise, and/or Defendant Resty Evinger was an agent of Defendant Amazon.com, LLC at the time of the collision.

26. Through its written and unwritten rules, requirements, company safety procedures, and processes for hiring and retaining delivery partners, Amazon.com, LLC negligently oversaw the operations of its deliveries for the time in question, both directly and indirectly as to non-delegable duties, respectively, including: (a) inadequate investigation as to driver qualifications; (b) unsafe parameters as to delivery times; (c) inadequate oversight as to vehicle maintenance and safety; and (d) inadequate and ineffective fleet safety programs or program requirements.

27. Amazon.com, LLC solicits local transportation delivery partners by advertising "Logistics experience not required" and that local delivery partners have "Support when you need it." Amazon.com, LLC's decision to retain a newly incorporated delivery contractor, like Cargo Leasing Solutions, LLC, along with the promise that "Amazon's experience is behind you every step of the way, from hands-on training to on-demand support" explicitly creates a special relationship between Amazon.com, LLC and Cargo Leasing Solutions, LLC, whereby Amazon.com, LLC has assumed one or more legal duties with regard to the operations of Cargo Leasing Solutions, LLC.

28. Amazon.com, LLC's requirement that delivery partners, like Cargo Leasing Solutions, LLC, use Amazon.com, LLC's technology and processes creates and institutes policies that endorse dangerous, careless, and reckless driving. Such policies posed and continue to pose an unreasonable risk of harm to the public, including Plaintiff Duran. Defendant Amazon.com, LLC knew or should have known of this unreasonable and foreseeable risk of harm to Plaintiff Duran and others who are similarly situated.



Screenshot: The Amazon advantage (logistics.amazon.com)

29. Defendant Amazon.com, LLC's decision to partner with and support inexperienced delivery contractors, like Cargo Leasing Solutions LLC, results from Amazon.com, LLC's desire to control the delivery of its packages. In return for Amazon.com, LLC's support to grow their businesses, delivery contractors, like Cargo Leasing Solutions, LLC, submit to Amazon.com, LLC's "technology and processes." By foregoing traditional delivery methods, Amazon.com, LLC obtains direct control over its package delivery services, including the ability for Amazon.com, LLC customers to track their packages on a map, contact the delivery driver and/or change where a package is left.

30. Amazon.com, LLC further requires delivery contractors to fulfill Amazon's promise of timely delivery to its customers, including, in some cases, deliveries in as little as two hours. The task of timely delivery packages to "delight thousands of customers every day as an essential part of Amazon" is forced upon Amazon.com, LLC's delivery partners, like Cargo

Leasing Solutions LLC, who are directed by Amazon.com, LLC to fulfill Amazon's impossible task of timely delivering huge volumes of packages. Defendant Amazon.com LLC knew or should have known that using a contractor, like Cargo Leasing Solutions LLC, which was created with the assistance and support of and continues to exist in its current iteration to fulfill the increasing delivery needs of Amazon.com, LLC, posed an unreasonable and foreseeable risk of harm to Plaintiff Duran and others similarly situated. Defendant Amazon.com, LLC's failure to hire an experienced delivery contractor able to exercise independent judgment with respect to safe package delivery or to properly train Cargo Leasing Solutions, LLC how to work in these dangerous conditions was a proximate cause of Plaintiff Duran's injuries and damages.

31. In the alternative, Defendant Amazon.com, LLC was negligent, careless, and reckless and is liable for promising to customers the delivery of an impossible volume of packages in as little as two hours, but in most cases within a day or mere days, to the detriment of the safety of Plaintiff Duran and others similarly situated. A decades old lawsuit against Dominos Pizza gave notice to the world, including Amazon.com, LLC, that a guarantee of speedy delivery that contributes to accidents and creates an increased risk of harm to persons, like Plaintiff Julie Duran and others similarly situated, is unacceptable and intolerable in modern society.

B. GROSS NEGLIGENCE

32. Plaintiff incorporates each and every allegation of the foregoing paragraphs as if fully set forth herein

33. Defendant Amazon.com, LLC's conduct, collectively described herein constitutes gross negligence as defined in Texas Civil Practice & Remedies Code § 41.001(11)(A)-(B). Defendant Amazon.com, LLC's negligent conduct was more than momentary thoughtlessness or inadvertence. Rather, Amazon.com, LLC's conduct involved an extreme degree of risk,

considering the probability and magnitude of the potential harm to Julie Barrera Duran. Defendant's acts or omissions involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others of which Defendant Amazon.com, LLC had actual, subjective awareness, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others, and Plaintiff therefore sues for exemplary damages, pursuant to Texas Civil Practice and Remedies Code section 41.003, in the amount determined by the trier of fact.

VII. CAUSES OF ACTION AGAINST DEFENDANT CARGO LEASING SOLUTIONS, LLC

A. NEGLIGENCE

34. Plaintiff incorporates each and every allegation of the aforementioned paragraphs as if fully set forth herein.

35. Defendant Cargo Leasing Solutions LLC was negligent. Defendant Cargo Leasing Solutions LLC owed a duty to Plaintiff to use reasonable care while operating a vehicle under Defendant Cargo Leasing Solutions LLC's direct ownership and/or control.

36. Defendant Cargo Leasing Solutions LLC had a duty to exercise the degree of care that a reasonably prudent person would use to avoid harm to others under circumstances similar to those described herein. Plaintiff's damages were proximately caused by Defendant Cargo Leasing Solutions LLC's negligence, carelessness, and reckless disregard of its said duty.

37. Defendant Cargo Leasing Solutions LLC's negligence, carelessness, and reckless disregard of its duty consisted of the following acts and omissions, based on the information currently available to Plaintiff:

- a. Defendant failed to maintain a proper lookout;
- b. Defendant failed to control the speed of its vehicle;
- c. Defendant failed to properly exercise control of its vehicle;
- d. Defendant failed to timely apply the brakes to avoid a collision; and

- e. Other negligent acts.

38. Furthermore, Plaintiff would show that Defendant Cargo Leasing Solutions LLC is liable for negligence in one or more of the following respects:

- a. Failing to hire competent and qualified drivers to drive and operate its vehicles;
- b. Failing to properly supervise its drivers, agents, employees or other individuals acting on its behalf;
- c. Failing to properly train its drivers, agents, employees or other individuals acting on its behalf;
- d. Failing to follow its own safety guidelines, policies and procedures;
- e. Failing to supervise and properly instruct its drivers, agents, employees or other individuals acting on its behalf to safely navigate the roads in Texas and follow the safety laws in place at the time of the accident; and
- g. Other negligent acts.

39. Each of these acts and omissions, singularly or in combination with others, constitute negligence and proximately caused the occurrence made the basis of this action, including the injuries sustained Julie Barrera Duran.

B. GROSS NEGLIGENCE

40. Plaintiff incorporates by reference all other paragraphs of this petition as if fully set forth herein.

41. Plaintiff would show the Court and the jury that the conduct of Defendant Cargo Leasing Solutions, LLC described herein constitutes gross negligence as defined by Texas Civil Practice & Remedies Code § 41.001(11)(A)-(B). Defendant Cargo Leasing Solutions LLC is liable to Plaintiff for gross negligence—to wit:

- a. Defendant Cargo Leasing Solutions consciously and/or deliberately engaged in recklessness, willfulness, wantonness and/or malice through Defendants' actions and/or inactions and Defendant Cargo Leasing Solutions, LLC should be liable in punitive and exemplary damages to Plaintiff; and
- b. Defendant Cargo Leasing Solutions LLC actions or inactions directly and proximately caused injury to Plaintiff, which resulted in the damages detailed below.

42. Defendant Cargo Leasing Solutions LLC's grossly negligent conduct proximately caused Plaintiff's injuries. As a result of such gross negligence of Defendant Cargo Leasing Solutions, LLC, Plaintiff is entitled to exemplary damages.

C. NEGLIGENT ENSTRUMENTMENT

43. Plaintiff incorporates by reference all other paragraphs of the petition as if fully set forth herein.

44. Plaintiff would show that Defendant Cargo Leasing Solutions, LLC is liable for negligent entrustment for providing and entrusting a reckless and unfit driver with a dangerous instrumentality owned by and/or under the control of Defendant Cargo Leasing Solutions, LLC. Defendant Cargo Leasing Solutions, LLC controlled the 2018 Dodge Ram 1500 Van driven by Resty Evinger. This vehicle was negligently entrusted to Defendant Evinger. Defendant Cargo Leasing Solutions, LLC knew or should have known of Defendant Evinger's unfit, reckless or incompetent driving abilities including the bulky walking boot on Defendant Evinger's left leg, which restricted her movement while driving. As set forth in more detail below, Defendant Evinger, Defendant Cargo Leasing Solution, LLC's employee, was negligent on the occasion in question, and this negligence proximately caused the accident and Plaintiff's injuries

VIII. DAMAGES

45. Plaintiff seeks unliquidated damages in an amount that is within the jurisdictional limits of the court.

46. As a direct and proximate result of the collision, Plaintiff, Julie Barrera Duran, seeks all damages provided by Texas law, including, but not limited to:

- a. reasonable and necessary medical and hospital bills in the past and in the future;
- b. physical pain and suffering in the past and in the future;
- c. mental anguish in the past and future; and
- c. physical impairment in the past and in the future.

IX. EXEMPLARY DAMAGES

47. The conduct of Defendants was more than momentary thoughtlessness, inadvertence, or error of judgment, and was of such a character as to make Defendants guilty of gross negligence. Defendants' acts or omissions involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others of which Defendants had actual awareness, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others, and Plaintiff therefore sues for the maximum amount of exemplary damages, pursuant to Texas Civil Practice & Remedies Code § 41.003, in the amount determined by the trier of fact.

48. Defendant Evinger knowingly operated a delivery vehicle with an obstructed view, placing Julie Duran in a dangerous situation. Defendant Amazon.com, LLC knowingly selected and required a delivery contractor to use technology and processes which create and endorse dangerous, illegal and reckless driving. Defendant Cargo Leasing Solutions, LLC allowed both an unfit driver to operate its vehicle and regularly allowed drivers to operate their vehicles with packages on the vehicle dash, obstructing the driver's view. It was foreseeable that someone could be harmed by the gross negligence of one or all the Defendants. Defendants' knowing and intentional conduct allows Plaintiff to recover exemplary damages from Defendants.

X. CONDITIONS PRECEDENT

49. All conditions precedent to Plaintiff's right to recover the relief sought herein occurred or have been performed.

XI. PRE-JUDGMENT AND POST-JUDGMENT INTEREST

50. Plaintiff seeks pre- and post-judgment interest as allowed by law.

XII. REQUESTS FOR DISCLOSURE

51. Plaintiff requests that each Defendant so named herein, within fifty (50) days of service of this request, disclose the information and materials described in Rule 194.2 of the Texas Rules of Civil Procedure, by producing responsive information or material at the offices of Plaintiff's undersigned attorneys.

XIII. PRAYER

52. WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendants be cited to appear and required to answer herein according to law; that Plaintiff recovers judgment of and from said Defendants for her actual damages in this cause in such amounts as the evidence may show and the Jury may determine to be proper, together with costs of suit, pre- and post-judgment interest; and for all such other and further relief, both in equity and law, to which Plaintiff may show that she is justly entitled.

RESPECTFULLY SUBMITTED,

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